

CADES SCHUTTE
A Limited Liability Law Partnership

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HAWAII EDUCATION INSTITUTE

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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N. MIYATA
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

HAWAII EDUCATION INSTITUTE dba
EDUCATION INSTITUTE OF HAWAII, a
Hawaii nonprofit corporation,

Plaintiff,

v.

CHRISTINA M. KISHIMOTO, in her capacity
as Superintendent of the Hawaii State
Department of Education; HAWAII STATE
DEPARTMENT OF EDUCATION; JOHN
DOES 1-10; JANE DOES 1-10; DOE
ENTITIES 1-10,

Defendants.

CIVIL NO. 19-1-1090-07 00th Div.
(Other Civil Action)

COMPLAINT; SUMMONS

COMPLAINT

Plaintiff Hawaii Education Institute dba Education Institute of Hawaii ("EIH"), for its
Complaint against Defendants Christina M. Kishimoto ("Kishimoto") and Hawaii State
Department of Education ("DOE") (collectively, the "Defendants"), alleges as follows:

I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.

Clerk, Circuit Court, First Circuit

INTRODUCTION

1. This lawsuit is about the Defendants' wrongful refusal to provide Plaintiff with public records that Plaintiff, a non-profit institute, seeks as part of its efforts to analyze the State of Hawaii's public education system. Defendants' refusal to provide these records violates Hawaii's open records law, the Uniform Information Practice Act (Haw. Rev. Stat. § 92F) ("UIPA").

THE PARTIES

2. Plaintiff EIH is a Hawaii nonprofit organization with its headquarters and principal place of business in the City and County of Honolulu. Its mission is to improve the quality of public education in Hawaii, and to serve as a think tank to promote empowerment and innovation in schools.

3. Defendant DOE, headquartered in the City and County of Honolulu, is a "Department" of state government and thus is within the scope and definition of Haw. Rev. Stat. § 92F-3.

4. Defendant Kishimoto is the Superintendent of the DOE and, on information and belief, is a resident of the City and County of Honolulu in the State of Hawaii.

5. Upon information and belief, Defendants JOHN DOES 1-10, JANE DOES 1-10, and DOE ENTITIES 1-10 (collectively, the "Doe Defendants") are persons or governmental entities whose names, identities, capacities, activities, and/or responsibilities are presently unknown to Plaintiff or its attorneys, despite diligent and good faith efforts to obtain information. Plaintiff asks leave of the Court to amend this Complaint with the true identities of these fictitiously named Doe Defendants when they become known to Plaintiff along with the nature of their liability.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction to compel disclosure of public records under HRS § 92F-15(a) and also has general jurisdiction over all remaining counts brought in this civil action pursuant to HRS § 603-21.5(a)(3).

7. Venue is proper pursuant to HRS §§ 92F-15(e) because the request for records was made in this judicial circuit, the DOE's headquarters are in this judicial circuit, and on information and belief the requested records are maintained in this circuit.

FACTUAL ALLEGATIONS

A. The DOE Has Denied EIH Access to Tens of Thousands of Public Records.

8. In line with its mission of improving educational quality in Hawaii, EIH on March 6, 2018 submitted a written request to the DOE, pursuant to UIPA, for twelve categories of public records. The purpose of the request was to obtain information that would assist EIH in preparing a detailed study of the Hawaii public education system.

9. EIH's written UIPA request asked for the following twelve categories of information:

- (1) General ledger system line items showing the DOE's actual revenues, expenditures, and encumbrances.
- (2) Electronic budget data showing budgeted revenues and expenditures.
- (3) DOE audit and budget documents.
- (4) Personally unidentifiable job position electronic data.
- (5) Personally unidentifiable student performance data.
- (6) Official electronic enrollment data files.
- (7) Charter school electronic data.

- (8) Pension and Other Post Employment Benefit (OPEB) financial data.
- (9) Other payments made by other agencies on behalf of the DOE.
- (10) DOE accounting manual.
- (11) Financial statement cross-walk information.
- (12) Weighted student formula ("WSF") process and actual amounts.

10. The information EIH requested from the DOE has routinely been obtained from many other state governmental education departments in the course of similar studies by some of the entities working with EIH, who have also sought to analyze those other state governments and assist them in streamlining their education departments.

11. In response to EIH's UIPA request, the DOE refused to provide many of the requested public records., claiming, among other things, that: (1) EIH seeks individual salaries, medical payments, and other personally identifiable information that are protected from disclosure; (2) the information sought was not "readily retrievable;" and (3) the DOE's partial production of documents was sufficient.

12. Not only did the DOE refuse to provide much of the requested information--including financial ledger details that EIH explained and that the DOE knows to be critical to EIH's analysis--but the DOE failed to promptly provide responses to EIH's requests, despite its legal obligation under UIPA to do so. Instead, the DOE provided its partial production of the requested records in dribs and drabs over the course of more than one year. The lengthy delays in providing the information resulted in substantial additional expenses to EIH, including legal fees and costs incurred in retaining counsel to attempt to obtain the withheld records and to speed up the delayed production. The DOE formalized its objections in a letter from the state Attorney

General, writing on behalf of the DOE, on June 4, 2019--nearly 15 months after EIH submitted its UIPA request.

13. The DOE's claim that EIH sought individual salaries, medical payments, and other personally identifiable information is false. EIH did not seek such information and was careful to exclude from its UIPA request any personally identifiable, confidential information.

14. The DOE's claim that the information sought is not "readily retrievable" also is false. EIH's strategic partners (with whom it is working on its analysis of DOE operations) have successfully obtained the exact same public records from dozens of other state governments' education departments, nearly all of whom have willingly provided that data to EIH's strategic partners.

15. The partial and incomplete responses by the DOE are listed in the table below, which includes the date of the partial production, if any, and the DOE's objections or refusal to produce the complete requested records:

(Table begins on following page.)

Request No.	Records Requested	DOE response date(s) (if any)	Documents provided (if any)	DOE objections (if any)
1	General ledger line items.	Incomplete response on June 28, 2018. Further incomplete response in or around March 2019.	Fewer than 2,500 of an expected 100,000 lines of data.	"Information is not readily retrievable (HRS § 92F-11(c)); DOE did provide retrievable information." Objection made on June 4, 2019.
3	DOE audit reports and budget documents.	Incomplete response on May 14, 2018.	Audit reports have been received, but budget documents have not been received for FY 2016 and 2017.	"DOE does not maintain budget books as requested." Objection made on June 4, 2019.
4	Personally unidentifiable job position electronic data, including actual salaries for positions for which actual salaries are not personally identifiable.	Failed to provide data on May 14, 2018, and claimed "clarification" was needed on the scope and meaning of the request. Produced incomplete partial response on February 25, 2019.	Four spreadsheets produced on February 25, 2019. Spreadsheets do not include personally unidentifiable actual salaries.	"DOE does not maintain the records (HRS § 92F-3); Information is not readily retrievable (HRS § 92F-11(c)); DOE did provide retrievable information." Objection made on June 4, 2019.
7	Charter school electronic data.	Failed to provide data in 2018, stating, "Agency does not maintain the records." Initial response did not state which other government agency maintains the requested records.	None.	On June 4, 2019, DOE augmented its initial response from 2018, stating that the requester was referred to the Charter School Commission.

(Table continues on following page.)

Request No.	Records Requested	DOE response date(s) (if any)	Documents provided (if any)	DOE objections (if any)
8	Pension and OPEB financial data.	Failed to provide data in 2018 or 2019.	None.	“DOE does not maintain the records (HRS § 92F-3); Information is not readily retrievable (HRS § 92F-11(c)); Referred requester to Dept. of Budget and Finance, and Hawaii ERS.” Objection stated on June 4, 2019.
9	Other payments made by other agencies on behalf of the DOE.	Failed to provide data in 2018 or 2019.	None.	“DOE does not maintain the records (HRS § 92F-3); Information is not readily retrievable (HRS § 92F-11(c)); Referred requested to other Departments.” Objection stated on June 4, 2019.
12	Weighted student formula (“WSF”) process and actual calculations.	Provided links to government website describing the WSF on April 16, 2018. Failed to provide any information as to actual calculations.	Links to DOE website.	No objections made in spite of incomplete response.

B. Defendants Threatened EIH With Retribution After EIH Complained About Being Denied Access to the DOE’s Public Records.

16. After the DOE failed and refused to provide access to the requested documents, EIH embarked on a public campaign to urge the DOE to reconsider and to rally public support for EIH’s informational requests. EIH’s public campaign resulted in substantial media attention and a number of favorable articles and editorials in Hawai‘i media publications.

17. On May 7, 2019, acting in her official capacity as Superintendent of the State Department of Education, Kishimoto sent a letter on DOE letterhead to Stephen Terstegge, the Executive Director of EIH.

18. In her letter, Kishimoto stated that she was “very disappointed to hear that you have launched a petition to try to acquire financial data” from the DOE. Kishimoto falsely claimed that EIH was attempting to seek “confidential types of data” including “individual salaries, medical payments, and other personally identifiable information,” when in fact EIH had been careful to exclude such information from its requests.

19. Kishimoto further stated that EIH’s launching of a “public petition” and “announcing your grievances to the media” was “not a constructive means to reach your goals.” Kishimoto falsely stated that EIH, to receive the requested financial data, must go through government procurement procedures--that is, obtain a DOE contract--and “cannot force its way ahead of the line by demanding data through threats of petitions and confrontation.” Kishimoto further stated that EIH “should re-examine [its] current path and work with us in good faith.”

20. Kishimoto’s statements were made in bad faith and with the intent of chilling EIH’s inquiries, interfering with EIH’s analysis of DOE operations, and dissuading EIH from further pursuing its public records requests.

COUNT I: DENIAL OF ACCESS TO GOVERNMENT RECORDS

21. The allegations contained in Paragraphs 1 through 16 are incorporated here by reference as if fully set forth herein.

22. UIPA imposes on all state government agencies affirmative “disclosure responsibilities.” HRS § 92F-11. Indeed, “[a]ll government records are open to public inspection unless access is restricted or closed by law,” and each agency “upon request by any

person shall make [all such] government records available for inspection and copying during regular business hours.” HRS § 92F-11(a), (b).

23. A person aggrieved by a denial of access to a government record may bring an action against the offending agency at any time within two years after the agency denial to compel disclosure. HRS § 92F-12(a).

24. As set forth above, Defendants have failed or refused to disclose, in whole or in part, the records EIH sought in its March 6, 2018 request.

25. Because Kishimoto acted in bad faith to chill EIH’s public inquiry as set forth in the allegations above, she is personally liable for the UIPA violation detailed here and is not immunized from liability pursuant to HRS § 92F-16.

26. None of the exceptions to disclosure set forth in UIPA apply to protect the withheld records from public disclosure.

27. EIH therefore is entitled to an order requiring Defendants to disclose all wrongfully withheld documents that are responsive to EIH’s request.

28. EIH is also entitled to an order requiring Defendants to reimburse all attorney’s fees and costs reasonably incurred in this litigation pursuant to HRS § 92F-15(d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as set forth below:

- A. For an order requiring the DOE to disclose all wrongfully withheld documents responsive to EIH’s March 6, 2018 UIPA request to the DOE;
- B. For an order by this Court permanently enjoining the Defendants from refusing to provide EIH any of the requested documents as retaliation for EIH’s political speech or for any other impermissible content-based reason;

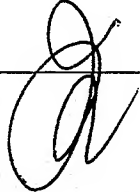
C. For all attorneys' fees, costs of suit, plus interest, incurred in this action; and

D. Such other and further relief as this Court deems just and proper.

DATED: Honolulu, Hawaii, July 11, 2019.

CADES SCHUTTE
A Limited Liability Law Partnership

JEFFREY S. PORTNOY
JOHN P. DUCHEMIN
Attorneys for Plaintiff
HAWAII EDUCATION INSTITUTE



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ENTITIES 1-10,

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CIVIL NO. _____
(Other Civil Action)

SUMMONS

SUMMONS

STATE OF HAWAII

To the above-named Defendant:

You are hereby summoned and required to file with the court and serve upon Jeffrey S. Portnoy and John P. Duchemin of Cades Schutte LLP, plaintiff's attorneys, whose address is 1000 Bishop Street, 12th Floor, Honolulu, Hawaii 96813, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

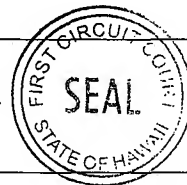
This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

In accordance with the Americans with Disabilities Act and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the First Circuit Court Administration Office at Phone No. (808) 539-4333, Fax No. (808) 539-4322 or TTY No. (808) 539-4853 at least ten (10) working days prior to your hearing or appointment date.

DATED: Honolulu, Hawaii, JUL 11 2019

N. MIYATA



Clerk of Court